

PROSKAUER ROSE LLP
Russell L. Hirschhorn
Kevin J. Pflug
1585 Broadway
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Attorneys for Plaintiff
Board of Trustees of the UFCW Local 174 Pension Fund

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOARD OF TRUSTEES OF THE UFCW
LOCAL 174 PENSION FUND,

Plaintiff,

v.

MOTT HAVEN PACKING, CO., INC.,

Defendant.

:
:
: 08 Civ. 03505 (GEL) (KNF)
:
:

: **AFFIDAVIT OF RUSSELL I.**
: **HIRSCHHORN, ESQ. IN SUPPORT OF**
: **NOTICE OF CAUSE FOR JUDGMENT**
: **BY DEFAULT**
:

:
: ECF CASE

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

RUSSELL L. HIRSCHHORN, being duly sworn, deposes and says:

1. I am an attorney at law admitted to practice before this court.
2. I am associated with the law firm of Proskauer Rose LLP, attorneys for Plaintiff

Board of Trustees of the UFCW Local 174 Pension Fund ("Plaintiff") and I am fully familiar with the facts of this case.

3. This affidavit is made in support of Plaintiff's Order to Show Cause for Default Judgment against Mott Haven Packing, Co., Inc. ("Mott Haven" or "Defendant").

4. Mott Haven was served by Jessica Miller with true copies of the summons and complaint in this action on April 18, 2008, by service on Carol Vogt, an authorized agent in the Office of the Secretary of the State of New York and that proof of service were filed with this court on April 30, 2008. (*See* Docket No. 2.)

5. A default judgment is appropriate because Defendant has failed to answer, appear or otherwise defend in this action within the time period permitted by law.

6. In a case involving a retirement fund seeking a default judgment against an employer that owed the fund withdrawal liability, this Court has held that "[t]he Second Circuit has approved the holding of an inquest by affidavit, without an in-person court hearing, 'as long as [the Court has] ensured that there was a basis for the damages specified in the default judgment.'" *Tr. of the Ret. Fund of the Amalgamated Ins. Fund v. Lopal Sec., Inc.*, 2007 U.S. Dist. LEXIS 39604, *3 (S.D.N.Y. June 1, 2007) (quoting *Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.*, 109 F.3d 105, 111 (2d Cir. 1997)).

7. The amounts set forth in the Statement of Damages attached hereto as Exhibit A remain justly due and owing and no part thereof has been paid to Plaintiff.

8. Each billing entry on the attached time records was reviewed on a monthly basis before being submitted to Plaintiff to determine that the time charges were accurate, reasonable, and necessarily incurred in the action against Mott Haven. A true and correct copy of the time records for this matter are attached hereto as Exhibit B.

9. As set forth in the proposed Judgment by Default, Plaintiff seeks a \$544,076.35 judgment against Mott Haven computed as follows: (a) 522,734.00 for withdrawal liability, (b) \$17,800.35 for accrued interest, (c) \$350.00 for costs, and (d) \$3,192.00 for attorney's fees.



RUSSELL L. HIRSCHHORN

Sworn and subscribed to before me
this 16 day of June 2008



NOTARY PUBLIC

WAYNE L. HENDERSON
Notary Public, State of New York
No. 01HE5083993
Qualified in Bronx County
Commission Expires August 25, 2009

EXHIBIT

A

PROSKAUER ROSE LLP
Russell L. Hirschhorn
Kevin J. Pflug
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New York, New York 10036-8299
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOARD OF TRUSTEES OF THE UFCW
LOCAL 174 PENSION FUND,

Plaintiff,

v.

MOTT HAVEN PACKING, CO., INC.,

Defendant.

:
:
: 08 Civ. 03505 (GEL) (KNF)
:
:

: **STATEMENT OF DAMAGES**

: ECF CASE
:
:
:

Withdrawal liability	\$	522,734.00
Interest accrued on withdrawal liability through 6/13/2007	\$	17,800.35
Cost of Filing Complaint	\$	350.00
Attorneys' fees	\$	<u>3,192.00</u>
TOTAL AMOUNT SOUGHT ON DEFAULT:	\$	544,076.35

Dated: June 16, 2008

Respectfully submitted,

PROSKAUER ROSE LLP

By: _____
Russell L. Hirschhorn
Kevin J. Pflug
1585 Broadway
New York, New York 10036-8299
P: 212.969.3286
F: 212.969.2900
Attorneys for Plaintiff

EXHIBIT

B

UFCW LOCAL 174 PENSION FUND
900 SOUTH AVENUE, 2ND FLOOR, SUITE 64
STATEN ISLAND, NY 10314

June 13, 2008

ATTENTION: MS. BRANDI LAULETTI, FUND ADMINISTRATOR

PROSKAUER ROSE LLP

1585 Broadway
New York, NY 10036-8299

Employer Identification No. 13-1840454

CLIENT NAME: UFCW LOCAL 174 PENSION FUND
MATTER NAME: ADV. MOTT HAVEN
FILE #: 74616.0011

FOR LEGAL SERVICES RENDERED INCLUDING DISBURSEMENTS AND
CHARGES INCURRED FOR THE MONTH ENDED JUNE 13, 2008
AS SET FORTH IN THE ATTACHED PRINTOUT

TOTAL FEES: \$3,192.00

TOTAL DUE: \$3,192.00

CLIENT: UFCW LOCAL 174 PENSION FUND
 MATTER: ADV. MOTT HAVEN
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June 13, 2008

DETAIL DESCRIPTION OF SERVICES RENDERED:

DATE	DESCRIPTION		AMOUNT
04/03/08	Revised withdrawal liability complaint against Mott Haven; prepared exhibits to same; drafted summons and civil cover sheet ASSOCIATE: KEVIN J. PFLUG	5.50	1622.50
04/04/08	Conv w/MCooper re: Obtained copy of judgment at Court, scanned/emailed the information to the attorneys, and entered the information onto the docket. LIT. SUPPORT: ALLEN F. HEALY	.50	80.00
04/10/08	Reviewing email from Pflug re: Mott Haven collection suit; reviewing files re: same; emailing Pflug re: same ASSOCIATE: LEAH E. LABEN	.10	36.00
04/10/08	Proofread and finalized Mott Haven complaint, summons, and civil cover sheet ASSOCIATE: KEVIN J. PFLUG	.70	206.50
05/05/08	Review correspondence and pleadings re Mott Haven complaint. ASSOCIATE: RUSSELL L. HIRSCHHORN	.30	183.00
05/06/08	T/.c to counsel for Mott Haven in response to letter asking for extension to respond to complaint. ASSOCIATE: RUSSELL L. HIRSCHHORN	.10	61.00
05/09/08	Reviewing email from Fund Office re: Mott Haven acceleration letter ASSOCIATE: LEAH E. LABEN	.10	42.50
05/12/08	Reviewing email from Hirschhorn re: Mott Haven suit; reviewing files re: same ASSOCIATE: LEAH E. LABEN	.10	42.50

CLIENT: UFCW LOCAL 174 PENSION FUND
MATTER: ADV. MOTT HAVEN
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05/21/08	T/c with opposing counsel re litigation and status of Mott Haven ASSOCIATE: RUSSELL L. HIRSCHHORN	.50	305.00
05/21/08	Email to B Lauletta re status of Mott Haven litigation. ASSOCIATE: RUSSELL L. HIRSCHHORN	.20	122.00
05/21/08	Phone call with Hirschhorn re: Fund auditor for purposes of valuing Mott Haven; emailing Hirschhorn re: same ASSOCIATE: LEAH E. LABEN	.10	42.50
05/21/08	Reviewed judge's rule regarding filing a motion for a default judgment; e-mail exchange with Mr. Hirschhorn regarding drafting a motion for a default judgment ASSOCIATE: KEVIN J. PFLUG	.40	118.00
05/22/08	Drafted Clerk's Certificate of Default ASSOCIATE: KEVIN J. PFLUG	.50	147.50
05/27/08	Determine next steps to satisfy judgment ASSOCIATE: RUSSELL L. HIRSCHHORN	.30	183.00

CLIENT: UFCW LOCAL 174 PENSION FUND
MATTER: ADV. MOTT HAVEN
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June 13, 2008

TIME AND FEE SUMMARY

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Total</u>
RUSSELL L. HIRSCHHORN	1.40	610.00	854.00
LEAH E. LABEN	.40	408.75	163.50
KEVIN J. PFLUG	7.10	295.00	2,094.50
TOTAL FOR ASSOCIATE	8.90		3,112.00
ALLEN F. HEALY	.50	160.00	80.00
TOTAL FOR LIT. SUPPORT	.50		80.00
MATTER TOTAL:	9.40		\$3,192.00